

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

JAMES O. STRUTHERS, Individually, )  
and as Administrator of the Estate of )  
**ALICIA STRUTHERS**, deceased, )  
Plaintiff. )  
v. ) CASE NO. 2:06-CV-00127-MHT-SRW  
MERCK & CO., INC., a foreign )  
Corporation; ANNE BRANDON, an )  
Individual; LAMONDE RUSSELL, an )  
Individual; and fictitious Defendants )  
A, B, C & D, being those persons, firms )  
or Corporations whose fraud, scheme to )  
defraud, and/or other wrongful conduct )  
caused or contributed to the Plaintiff's )  
injuries and damages, and whose true )  
names and identities are presently )  
unknown to Plaintiff, but will be )  
substituted by amendment when )  
ascertained, )  
Defendants. )

**MOTION TO REMAND**

Plaintiff respectfully moves the Court to remand this action to the Circuit Court of Montgomery County, Alabama, pursuant to 28 U.S.C. § 1447(c). In support, Plaintiff shows the following:

1. Federal subject matter jurisdiction is not present. The Defendants have failed to meet their burden of establishing federal jurisdiction.
2. Diversity jurisdiction as outlined by 28 U.S.C. § 1332 is not present. The parties to this action are not diverse. Plaintiff is a residents of the State of Alabama. Merck & Co. is incorporated under the laws of the State of New Jersey and has its

principle place of business in New Jersey. Defendants Anne Brandon and Lamonde Russell are residents of the State of Alabama. Furthermore, the amount in controversy exceeds \$75,000.

3. Plaintiff states viable claims under Alabama law against all Defendants. All Defendants are properly joined to this action. Defendant Merck has failed to show that Anne Brandon and Lamonde Russell, residents of Alabama, are fraudulently joined.

4. The removing Defendant failed to obtain consent or timely consent to removal from all properly served Defendants.

For the reasons stated above and in the accompanying Brief in Support of Motion to Remand, Plaintiff urges the Court to remand this action to the Circuit Court of Montgomery County, Alabama.

Respectfully submitted this 23<sup>rd</sup> day of February, 2006.

/s/ J. Paul Sizemore

**ANDY D. BIRCHFIELD, JR. (BIR006)**  
**J. PAUL SIZEMORE (SIZ004)**  
**BENJAMIN L. LOCKLAR (LOC009)**  
**W. ROGER SMITH, III (SMI257)**  
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**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon the parties  
as listed below by placing a copy of same in the United States Mail, first class postage  
prepaid, on this the 23<sup>rd</sup> day of February, 2006.

Alan T. Hargrove, Jr.  
Mike Brock  
F. Chadwick Morris  
**RUSHTON, STAKELY, JOHNSTON  
& GARRETT, P.A.**  
Post Office Box 270  
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/s/ J. Paul Sizemore  
**OF COUNSEL**